Supreme Court of the United States

OCTOBER TERM, 1941

No. ~~819~~ 820 7-8

In the Matter
of
THE WESTERN PACIFIC RAILROAD COMPANY,
a corporation,
Debtor,

FREDERICK H. ECKER, JOHN W. STEDMAN and REEVE SCHLEY, constituting the INSTITUTIONAL BONDHOLDERS COMMITTEE,
Petitioners,

v.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation; A. C. JAMES CO., a corporation; THE RAILROAD CREDIT CORPORATION, a corporation; THE WESTERN PACIFIC RAILROAD COMPANY, a corporation; IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company; RECONSTRUCTION FINANCE CORPORATION; and CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and SAMUEL ARMSTRONG, as Trustees under the First Mortgage of The Western Pacific Railroad Company, a corporation,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE RAILROAD CREDIT CORPORATION IN OPPOSITION TO GRANTING PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

EDWARD G. BUCKLAND
WILLIAM J. KANE

Attorneys for The Railroad Credit Corporation, Respondent.

QUINNIPIACK PRESS, INC., NEW HAVEN, CONN.

In The

Supreme Court of the United States

OCTOBER TERM, 1941

No. 820

In the Matter
of

THE WESTERN PACIFIC RAILROAD COMPANY,
a corporation,

Debtor,

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO and SAMUEL ARMSTRONG, as Trustees under The Western Pacific Railroad Company First Mortgage dated June 26, 1916,

Petitioners,

v.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation; THE WESTERN PACIFIC RAILROAD COMPANY, a corporation; IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of The Western Pacific Railroad Company; A. C. JAMES CO., a corporation; THE RAILROAD CREDIT CORPORATION, a corporation; FREDERICK H. ECKER, JOHN W. STEDMAN and REEVE SCHLEY, constituting the Institutional First Mortgage Bondholders Committee; and RECONSTRUCTION FINANCE CORPORATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TEXT

The Railroad Credit Corporation, a Respondent in the above entitled action, opposes the granting of either of the above entitled petitions for review on writ of certiorari and urges that the judicial discretion of this Court be exercised to deny such petitions because there is no special or important reason therefor; also, because none of the reasons set forth in paragraph 5 of Rule 38 exists for granting such petitions.

The decision and opinion of the Circuit Court of Appeals are in substance expressed in these statements:

A. It was necessary to determine the values of the debtor's property in order to determine the value of each of the claims against such property or any part of it.

The following is quoted from the opinion of the Circuit Court of Appeals: (unreported)

> "The holding company objected to the plan on the ground that it is not fair and equitable, but is unfair and inequitable, in that it excludes the holding company from participation in the reorganization. The objection states that the debtor is not insolvent, but has property of a value greatly in excess of its liabilities.' Obviously, if the statement is true, the holding company is entitled to participate in the reorganization, and its exclusion therefrom is unfair and inequitable. Thus, to determine the question raised by the holding company's objection, it was necessary to determine the value of the debtor's property as of the effective date of the plan — January 1, 1939. Consolidated Rock Products Co. v. DuBois, 312 U. S. 510, 517–525."

* * * * *

> "To determine the value of the above mentioned claims, it was necessary to determine the value of (1)

the debtor's entire property, (2) the property subject to the first mortgage now outstanding, (3) the $18,999,500 of refunding bonds pledged to secure the claims of A. C. James Company, Railroad Credit Corporation and Reconstruction Finance Corporation and (4) the other collateral pledged to secure each of said claims. To determine the value of the refunding bonds, it was necessary to determine the value of (1) the property subject to the refunding mortgage only and (2) the property subject both to the refunding mortgage and to the first mortgage now outstanding. This, of course, necessitated a determination as to which of the debtor's property is, and which is not, subject to each mortgage. Consolidated Rock Products Co. v. DuBois, *supra*."

B. These values should have been, but were not, determined by the Interstate Commerce Commission and certified by it to the District Court.

The following is quoted from the opinion of the Circuit Court of Appeals:

> "Subsection (e) of § 77 provides: 'If it shall be necessary to determine the value of any property for any purpose under this section, the [Interstate Commerce] Commission shall determine such value and certify the same to the court in its report on the plan.' In this case, as has been seen, it was necessary to determine the value of (1) the debtor's entire property, (2) each of the claims of Reconstruction Finance Corporation, (3) the claim of Railroad Credit Corporation, (4) the claim of A. C. James Company, (5) the claims of the holders of first mortgage bonds now outstanding, (6) the $10,000,000 of new first mortgage bonds, (7) the $21,219,075 of income bonds, (8) the 318,502.97 shares of new preferred stock, (9) the 319,441 shares of new common stock, (10) the property subject to the first mortgage now outstanding, (11) the $18,999,500

of refunding bonds pledged to secure the claims of Reconstruction Finance Corporation, Railroad Credit Corporation and A. C. James Company, (12) the other collateral pledged to secure each of said claims, (13) the property subject to the refunding mortgage only, (14) the property subject both to the refunding mortgage and to the first mortgage now outstanding, (15) the property which would be subject to the new first mortgage, and (16) the property which would be subject to the income mortgage. It thus became the duty of the Commission to determine these values and certify them to the court. That duty was not performed."

C. Values so determined and certified by the Interstate Commerce Commission in a plan of reorganization may be employed by the District Court in the determination of the fairness of the plan, but such determination should be the result of the exercise by the District Court of its own independent judgment. Lacking the requisite valuation data this independent judgment could not be and was not exercised.

The following is quoted from the opinion of the Circuit Court of Appeals:

"Lacking the requisite valuation data, the court was in no position to exercise the 'informed, independent judgment' which appraisal of the fairness of a plan of reorganization entails. Consolidated Rock Products Co. v. DuBois, supra. See, also, National Surety Co. v. Coriell, 289 U. S. 426, 436; First National Bank v. Flershem, 290 U. S. 504, 525; Case v. Los Angeles Lumber Products Co., 308 U. S. 106, 115. Therefore, instead of approving the plan, the court should have entered an order dismissing the proceeding or, in its discretion and on motion of any party in interest, referring the proceeding back to the Commission for further action."

All of the foregoing statements, (A), (B) and (C) were considered and affirmed by this Court in its decision and opinion in *Consolidated Rock Products Co. v. DuBois*, 312 U. S. 510, 517-535, which was a review and affirmation of the decision of this Circuit Court of Appeals. These questions of federal law so answered with finality are the only ones of substance involved in this case.

Lest there be any question as to the pertinency of this Court's opinion in the *Rock Products Case*, the following paragraphs are quoted from that opinion:

(p. 520)

> "We agree with the Circuit Court of Appeals that it was error to confirm this plan of reorganization.
>
> "1. On this record no determination of the fairness of any plan of reorganization could be made. Absent the requisite valuation data, the court was in no position to exercise the 'informed, independent judgment' (National Surety Co. v. Coriell, 289 U. S. 426, 436) which appraisal of the fairness of a plan of reorganization entails. Case v. Los Angeles Lumber Products Co., 308 U. S. 106. And see First Nat. Bank v. Flershem, 290 U. S. 504, 525." * * *

(p. 524)

> "We have already noted that no adequate finding was made as to the value of the assets of Consolidated. In view of what we have said, it is apparent that a determination of that value must be made so that criteria will be available to determine an appropriate allocation of new securities between bondholders and stockholders in case there is an equity remaining after the bondholders have been made whole."

D. The District Court should have entered an order dismissing the proceeding, or, in its discretion and on motion of any party in interest, have referred

the proceeding back to the Commission for further action.

This last statement (D) is in substance the mandate of a part of Sub-section (e) of Section 77 of the Bankruptcy Act. The Circuit Court of Appeals followed the decision of the *Consolidated Rock Products Co. v. DuBois, supra,* and enforced the mandate of the statute in the case at bar.

From the foregoing this respondent claims that there is no special or important reason for granting the petition for certiorari or for a further review of issues already decided.

No special and important reasons which might be considered applicable to the allegations contained in said petitions are among those outlined in paragraph (5) sub-paragraph (b) of said Rule 38 as the following demonstrates.

Respondent claims: that no Circuit Court of Appeals has rendered a decision in conflict with another Circuit Court of Appeals on the matters embraced in either of said petitions; no decision of an important question of local law is involved; no decision of an important question of federal law has been rendered which has not been, but should be, settled by the Supreme Court of the United States; no decision of a federal question has been rendered which is probably in conflict with applicable decisions of the Supreme Court of the United States; there has been no departure from the accepted and usual course of judicial proceedings by the Circuit Court of Appeals for the Ninth Circuit nor any such sanction of such departure by a lower court as to call for an exercise of the supervision of the Supreme Court of the United States.

1.

PUBLIC INTEREST

Included in the reasons relied on by the petitioners for the allowance of the writ is the question of "public interest." This phrase, so frequently and freely cited by petitioners, is not among the "special and important reasons" scheduled in the rules of this Court as a basis for granting a petition for review. In the absence of those set forth in Rule 38(5), it may be assumed that the Circuit Court of Appeals is competent to be a court of last resort where public interest is involved and where there are no conflicting decisions of other Circuit Courts of Appeal and where the question has already been settled by this Court.

The petitioners are evidently of that class referred to and looked upon with disfavor by this Court in *Magnum Import. Co. v. Coty*, 262 U. S. 159, 163, where it was said that the certiorari jurisdiction "was not conferred upon this Court merely to give the defeated party in the circuit court of appeals another hearing. Our experience shows that 80 percent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ." Inasmuch as none of the reasons advanced and relied on by petitioners for the granting of the writ comes within the rules of this Court, we feel that these petitioners fall clearly within the 80 percent referred to by this Court in the case just cited. It is interesting to note what the present Solicitor General of the United States said with reference to this matter in the January, 1942, issue of the American Bar Association Journal (p. 22), that "to apply for review unless there is very good reason to do so at least unnecessarily burdens the Supreme Court and seeks to make of it a sort of additional and final Circuit Court of Appeals, to the detriment of the proper sphere of influence of both the Circuit Court and the Supreme Court."

2.

CASES RELIED ON BY PETITIONERS FOR GRANTING OF THE WRIT

In support of their grounds for granting of the petitions, petitioners cite many cases decided by this Court, Circuit Courts of Appeal and Federal District Courts, some of which concern proceedings under Section 77B of the Bankruptcy Act, 11 U. S. C. § 207, the remainder involving questions of general law in proceedings other than under the Bankruptcy Act. A careful study of these cases has failed to disclose that the opinion of the Court in any one of them is in conflict with the decision rendered by the United States Circuit Court of Appeals for the Ninth Circuit in the case at bar. Consequently, the grounds may be termed the usual conventional objections.

One of the cases relied on is that of *Chicago, Milwaukee, St. Paul and Pacific Railroad Co.*, decided by the United States Circuit Court of Appeals for the Seventh Circuit on December 4, 1941, and not yet reported. Petitioners allege that the decision of the Circuit Court of Appeals for the Ninth Circuit is in some respects in conflict with the opinion of that Court. Where the conflict, if any, exists respondent is unable to see. To the contrary, it is squarely in conformity with the findings of the Circuit Court of Appeals for the Ninth Circuit. Proceedings in each of these cases were under Section 77 of the Bankruptcy Act, as amended. Both involved the validity of reorganization plans certified by the Interstate Commerce Commission and approved, in both instances, by orders of the District Courts, each opinion finding an absence in valuation by the Commission of the Debtor's entire property which it is required to determine under Section 77(e) of the statute, the necessity of which this Court held in *Consolidated Rock Products Co., supra*, and *Los Angeles Lumber Co., supra*, was fundamental, without which "the court was in no position to

exercise the 'informed, independent judgment' * * * which appraisal of the fairness of a plan of reorganization entails." The orders of the District Courts were reversed and the proceedings remanded to the Interstate Commerce Commission for further action. It is significant that the opinions of both Courts were predicated upon a lack of finding of values in the plans of all properties involved in the reorganization, the duty of determining which under Section 77(e) rests on the Commission and not on the Court. To assert that the two opinions are inconsistent one with the other, and, therefore, in conflict, is to assume an argument not consonant with the principles upon which those decisions were founded and, consequently, comes within the realm of speculation and conjecture.

3.

INTERSTATE COMMERCE COMMISSION IS UNDER SPECIFIC STATUTORY MANDATE TO DETERMINE VALUE OF DEBTOR'S PROPERTY

Under Section 77B (11 U. S. C. § 207) the duty of determining value of the debtor's estate is left with the District Courts. This determination is a condition precedent to the approval of a plan, without which the Court would be unable "to exercise the 'informed, independent judgment' which appraisal of the fairness of a plan of reorganization entails." Likewise, in Section 77, a similar duty is imposed upon the Interstate Commerce Commission "so that criteria will be available to determine an appropriate allocation of new securities between bondholders and stockholders in case there is an equity

remaining after the bondholders have been made whole." *Consolidated Rock Products Co. v. DuBois, supra.* By statute (Subsection (e) of Section 77) the Commission is under a specific duty "to determine the value of any property for any purpose under this section." Absent such a determination it is difficult to comprehend how a fair and equitable plan could otherwise be evolved so that the rights and interests of creditors and stockholders would be protected.

4.

NO CONFLICT IN DECISIONS

Petitioners have flooded their petitions with many cases offered for the purpose of establishing a conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit. Suffice it to repeat, not a single opinion in the cases cited as reasons for the granting of the writ of certiorari is in anywise inconsistent with the grounds upon which the case at issue was decided. These very cases upon which petitioners rely to show a conflict respondent relies, in the main, to show there is no conflict. Emphasis is laid upon the decisions of this Court in *Consolidated Rock Products Co. v. DuBois, supra,* and *Case v. Los Angeles Lumber Products Co., supra,* as authorities for supporting some possible grounds for warranting this Court in granting their petitions for the writ. We are satisfied from what has been stated above that the decision of the Circuit Court of Appeals for the Ninth Circuit is in no respects in conflict with these opinions. It is well settled that the decisions of this Court in *Northern Pacific Ry. v. Boyd,* 228 U. S. 482 (1913) and *Kansas City Terminal R. Co. v. Central Union*

Trust Co., 271 U. S. 445 (1926), and cited by the petitioners, established the doctrine and reasoning enunciated by this Court in *Louisville Trust Co. v. Louisville, N. A. & C. R. Co.*, 174 U. S. 683, 684, that "any arrangement of the parties by which the subordinate rights and interests of the stockholders are attempted to be secured at the expense of the prior rights of either class of creditors comes within judicial denunciation." Thus it will be readily apparent to this Court that these cases, rather than conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit, are on all fours with it.

No attempt will be made to burden this Court by a needless reference to the decisions of the several Federal District Courts and the reports of the Interstate Commerce Commission in the many citations offered by the petitioners. Besides being satisfied that there is no conflict of decisions affecting the issues in the case at bar, we respectfully submit that these questions of federal law were considered and affirmed by this Court in its decision and opinion in *Consolidated Rock Products Co. v. DuBois, supra,* which was a review and affirmation of the decision of this Circuit Court of Appeals. These questions of federal law so answered with finality are the only ones of substance involved in this case.

5.

CONCLUSION

It is respectfully submitted that no grounds for certiorari are presented in the petitions; that the decision of the Court below reversing the Order of the District Court approving the Plan of Reorganization of The Western Pacific Railroad Company, Debtor, was in accordance with the requirements of

Section 77 of the Bankruptcy Act (11 U. S. C. § 205); that there is no special or important reason for granting the petitions for certiorari and that they should be denied.

Respectfully submitted,

EDWARD G. BUCKLAND,
WILLIAM J. KANE,
Attorneys for the Railroad Credit Corporation, Respondent.

Dated: January 16, 1942.